

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHNNY GOODMAN,

Defendant-Appellee.

UNPUBLISHED

June 26, 2003

No. 237844

Wayne Circuit Court

LC No. 01-008171-01

Before: Sawyer, P.J., and Meter and Schuette, JJ.

MEMORANDUM.

The people appeal as of right the circuit court's order dismissing charges against defendant. We reverse.

In a previous action, charges against defendant were dismissed without prejudice after a police witness failed to appear for trial. After the prosecutor refiled the charges, the trial court sought information regarding the circumstances surrounding the first dismissal. The court determined that the charges should have been dismissed with prejudice and entered a dismissal.

A trial court's authority over the discharge of a prosecutor's duties is limited to activities or decisions by the prosecutor that are unconstitutional, illegal, or ultra vires. *People v Morrow*, 214 Mich App 158, 161; 542 NW2d 324 (1995). A trial court does not have authority to review the prosecutor's decisions outside this narrow scope of judicial function. *Id.*

The prosecutor has exclusive authority to decide whom to prosecute. *People v Williams*, 244 Mich App 249, 251; 625 NW2d 132 (2001). In usurping the prosecutor's authority, a court commits a violation of the constitutional separation of powers. *Id.*, 251-252. The decision whether to dismiss a case or proceed to trial ultimately rests in the sole discretion of the prosecutor. *Id.*, 252.

The trial court improperly impinged on the prosecutor's authority. There was no legal basis for dismissing the charges.

Reversed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette